IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13532 of 2004

with

SPECIAL CIVIL APPLICATION No 13954 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

IBRAHIM HASSAN MOHMED PATEL SINCE DECD THRO LEGAL HEIRS

Appearance:

1. Special Civil Application No. 13532 of 2004
   MR HARDIK C RAWAL for Petitioner No. 1
   MR BG JANI for Respondent No. 1/1-1/4

2. Special Civil Application No. 13954 of 2004
   MR BG JANI for Petitioner No. 1
   MR.HARDIK C. RAWAL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/11/2004

COMMON ORAL JUDGEMENT

Special Civil Application No.13532 OF 2004

RULE. Mr.B.G. Jani, learned advocate appears for the respondent (in Special Civil Application No.13532 of 2004) waives service of rule.

Special Civil Application No.13954 2004

2. RULE. Mr.Hardik C. Rawal, learned advocate appearing for the Gujarat State Road Transport Corporation (hereinafter referred to as "the corporation") in Special Civil Application No.13532 of 2004, is directed to accept copy of Special Civil Application No.13954 of 2004 and waive service of rule.

3. At the joint request of the learned advocates both these matters are taken up for final disposal today.

4. Special Civil Application No.13532 of 2004 is filed by the corporation being aggrieved of the judgement and award 23.12.2003 in Reference (LCB) No.489 of 1999. The heirs of the deceased workman-Ibrahim Hassan Mohmed Patel have challenged this very judgement and award by filing Special Civil Application No.13954 of 2004, which is taken up for hearing along with this petition.

5. The facts of the case are that the learned Judge of the Labour Court, Bharuch was pleased to partly allow the reference of the heirs of the deceased workman. The learned Judge was pleased to order payment of 20% of the back wages for the intervening period. The learned Judge was also pleased to order that the award be complied with within 30 days from the date of its publication.

The deceased workman was serving as Conductor with the corporation. On 30.01.1995 when the respondent workman was on duty, his bus was checked and it was found that out of 48 passengers, six passengers were not issued tickets, it was also noticed that the fare was also not collected. A departmental inquiry was held wherein the charges were found proved, and hence the deceased respondent workman was dismissed by order dated

11.10.1995. The deceased workman after a delay of about four years raised an industrial dispute (the present one). During the pendency of the same, the workman expired on 03.01.2002, therefore, his heirs and legal representatives were brought on record.

6. The learned advocate for the corporation submitted that the learned Judge has committed error in partly allowing the reference and awarding 20% back wages, even without quashing the order of dismissal dated 11.10.1995. He submitted that the present case is covered by the recent judgements of the Honourable the Apex Court, in the matter of Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane, reported in JT 2004 (8) SC 103, and in the matter of M/s Sangham Tape Company Vs. Hans Raj, reported in JT 2004 (8) SC 109, and in view of those decisions the judgement and award of the learned Judge of the Labour Court cannot be allowed to stand and the same requires to be quashed and set aside and the order of dismissal be allowed to operate.

7. Mr.Utkarsh Jani for Mr.B.G. Jani, learned advocate appearing for the heirs and legal representatives of the deceased workman, the respondents in Special Civil Application No.13532 of 2004 and petitioner in Special Civil Application No.13954 of 2004 emphatically submitted that the learned Judge of the Labour Court has rightly held the misconduct on the part of the deceased workman to be that of negligence and not of misappropriation. He submitted that a line of distinction is required to be drawn between two types of cases, namely, (i) collecting the fare and not issuing tickets, and (ii) not collecting the fare and not issuing tickets. He submitted that in the case on hand, it is the case of the corporation that the deceased workman did not collect fare from six passengers and did not issue tickets to them. He submitted that the tendency on the part of the passengers to dodge the conductor and not purchasing tickets is also not unknown. Therefore, if at all any misconduct is to be alleged against the workman it can be that of 'negligence' only and not of dishonesty as it is not the case of the corporation that the deceased workman after having collected fare, did not issue tickets and therefore, intended to misappropriate the amount of fare. The learned advocate further submitted that the learned Judge has analytically examined the evidence and has then exercised his discretion and has ordered payment of 20% back wages only. He submitted that in fact the learned Judge ought to have awarded 100% back wages in view of the fact that it was deposed, by the wife of the workman, in her

deposition, Exhibit 12 that her husband tried to get employment in Bharuch but then he could not get any and that her husband had suffered heart attack about four years before. In view of that there was no question of his being gainfully employed. Therefore, the learned Judge ought to have awarded 100% back wages. The learned advocate submitted that in fact the heirs and legal representatives of the deceased workman were required to file the present petition for two reasons; firstly, the learned Judge has through inadvertence did not pass a specific order, 'quashing' the order of dismissal, and secondly, the learned Judge had awarded only 20% of the back wages.

8. Taking into consideration the rival submissions of both the learned advocates and taking into consideration the totality of the circumstances of the case and the fact that the workman has already expired on 03.01.2002 and the heirs and legal representatives are pursuing these proceedings, the petition filed by the heirs and legal representatives of the deceased workman and the petition filed by the corporation are partly allowed. The judgement and award passed by the learned Judge of the Labour Court, Bharuch in Reference (LCB) No.489 of 1999 is modified. The order of dismissal dated 11.10.1995, which through inadvertence, the learned Judge of the Labour Court has not quashed and set aside, is quashed and set aside. The respondent workman (who is represented through his heirs and legal representatives in Special Civil Application No.13532 of 2004) shall be treated to have been in service. However, he should be entitled for 10% back wages only. The GSRTC, petitioner in Special Civil Application No.13532 of 2004 is directed to implement this judgement as early as possible, but not later than 8 (eight) weeks from the date of receipt of this judgement. Rule is made absolute to the aforesaid extent.

(Ravi R. Tripathi, J.)

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